

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No.2576 of 2010**

Chzandan Singh, S/o Late Shri Jethu Ram, aged about 40 years, posted as Head Constable No.265, Police post – Urga, Police Station – Kotwali, District – Korba (CG) Resident of Police Line Urga, District – Korba (CG)

----- **Petitioner**

Versus

1. The State of Chhattisgarh, Through Secretary, Home Department, D.K.S.Bhawan, Mantralay, Raipur (CG)
2. The Superintendent of Police, Korba, District – Korba (CG)
3. District and Session Court, Through: Superintendent, District Court – Korba (CG)

----- **Respondents**

For Petitioner	: Mr.Sandeep Dubey, Advocate
For Respondents No.1&2	: Mr.Sunil Otwani, Additional Advocate General with Mr.Sanjay Pathak, Panel Lawyer

Hon'ble Shri Justice Sanjay K. Agrawal
Order on Board

19.7.2021

1. Proceedings of this matter have been taken-up through video conferencing.
2. The petitioner herein calls in question adverse remark made by the Second Additional Sessions Judge (F.T.C.), Korba on 11.5.2010 in Bail Application No.301/10, whereby the Additional Sessions Judge directed the Superintendent of Police, Korba to initiate departmental enquiry against him.
3. Mr.Sandeep Dubey, learned counsel appearing for the

petitioner would submit that learned Additional Sessions Judge has committed grave legal error in directing for departmental enquiry against the petitioner holding that on account of seizure made by him /incompetent person, two accused persons namely Ramkumar and Ramnarayan were admitted to bail and no opportunity of hearing was afforded to the petitioner, which is in teeth of the judgment rendered by the Supreme Court in the matter of **State (Govt. of NCT of Delhi) v. Pankaj Chaudhary**¹, as such, the impugned adverse remark made by the Second Additional Sessions Judge (F.T.C.), Korba in paras-6 and 7 of the order dated 11.5.2010 (Annexure P-1) deserves to be set-aside to the extent of directing the Superintendent of Police, Korba to hold departmental enquiry against the petitioner.

4. On the other hand, Mr. Sunil Otvani, learned Additional Advocate General for respondents No.1 and 2/State, would submit that the order passed by learned Additional Sessions Judge is in accordance with law.

5. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and also went through the records with utmost

¹ 2019 (11) SCC 575

circumspection.

6. In the matter of Pankaj Chaudhary (supra), the accused was convicted for offence under Section 376(2)(g) of IPC by the trial Court whereas the High Court, while acquitting the accused, made certain disparaging remarks about the Investigating Officer and the matter was challenged by the said Officer before the Supreme Court wherein their Lordships of the Supreme Court, further taking note of the decisions rendered in the matters of State of U.P. v. Mohd. Naim², S.K. Viswambaran v. E. Koyakunju³, Manish Dixit v. State of Rajasthan⁴, R.K. Lakshmanan v. A.K. Srinivasan⁵, Niranjan Patnaik v. Sashibhusan Kar⁶, Jage Ram v. Hans Raj Midha⁷ and State of Karnataka v. High Court of Karnataka⁸ clearly held that since the strictures were passed by the High Court without affording an opportunity of hearing, the disparaging remarks could not have been made and it was set aside by holding in paragraphs 42 and 45 as under :-

2 AIR 1964 SC 703

3 (1987) 2 SCC 109

4 (2001) 1 SCC 596

5 (1975) 2 SCC 466

6 (1986) 2 SCC 569

7 (1972) 1 SCC 181

8 (2000) 7 SCC 333

"42. While passing disparaging remarks against the police officials and directing prosecution against them, in our considered view, the High Court has failed to bear in mind the well settled principles of law that should govern the courts before making disparaging remarks. Any disparaging remarks and direction to initiate departmental action/prosecution against the persons whose conduct comes into consideration before the court would have serious impact on their official career.

45. Since the High Court has passed strictures against the police officials who were involved in the investigation of FIR No. 559 of 1997 without affording an opportunity of hearing to them, the disparaging remarks are liable to be set aside."

7. Reverting to the facts of the present case, it is not in dispute that the petitioner made seizure of liquor from accused persons namely Ramkumar and Ramnarayan in Criminal Case No.514/2010 registered at Police Chowki-Urga, Police Station-Kotwali, Korba, Distt.Korba under Sections 34 and 36 of the Chhattisgarh Excise Act, 1915 (hereinafter called as 'Excise Act') in which the accused persons applied for bail and in that bail application though the accused persons were enlarged on bail holding that the petitioner being Head Constable has no right to make search and seizure under Sections 54 and 55 of the Excise Act, therefore, the accused are entitled for bail.
8. It is correct to say that learned Additional Sessions Judge has rightly granted bail to the accused persons

finding legal ground in their favour, but at the same time committed legal error in directing departmental enquiry against the petitioner without even noticing and hearing the petitioner before directing departmental enquiry, which is in teeth of the judgment rendered by the Supreme Court in the matter of Pankaj Chaudhary (supra).

9. In that view of the matter, the impugned adverse remark made by the Second Additional Sessions Judge (F.T.C.), Korba in paras-6 and 7 of the order dated 11.5.2010 directing departmental enquiry against the petitioner is hereby set-aside.

10. The writ petition is allowed to the extent indicated hereinabove. No order as to cost(s).

Sd/-

(Sanjay K.Agrawal)
Judge

B/-